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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,357	08/22/2003	Craig N. Hansen	E100.12.12	8615

7590 08/09/2006

Richard John Bartz
Southdale Office Centre
Suite 350
6750 France Avenue South
Edina, MN 55435

EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/646,357		HANSEN ET AL.	
	Examiner		Art Unit	
	Danton DeMille		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/26/14, 4/21/14, 4/9/14</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: reference character "61" has been used to designate both a hole in line 1 of page 13 and end of hose in line 10 of page 13.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(s) because a likeness of President George Bush has been used. Depicting the President of the United States in a derogatory manner is potentially libelous. The likeness could also be a violation of copyright infringement. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 1-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims it is recited that there are means to secure the inner wall to the front panel of the cover. This would appear to contradict the specification. The specification page 12 paragraph 26 states that it is the outer wall of the bladder that is secured to the front panel.

It is also recited that the holes of the bladder are in the outer wall. This too would appear to contradict the specification page 12 paragraph 26.

In claim 13, there is no clear antecedent basis for "the upright rows of holes." It has been assumed that claim 13 depends on claim 12.

In claim 24 line 3, there is no clear antecedent basis for "said wall".

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,676,614. Although the

conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the pocket for example.

Claims 1-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,254,556 in view of Akerman et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to include holes in the bladder to allow air to flow out of the air chamber.

Claims 1-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,605,050 in view of Akerman et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to include holes in the bladder to allow air to flow out of the air chamber.

Claims 1-41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 11/100778. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the liner.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Lobo in view of Akerman et al.

Lobo teaches a cover as claimed including a bladder 14 secured 28 to the front panel and an air receiving passage 16 is shown in figure 7 including openings 20 between the inner and outer walls allowing air to flow from the air passage 16 into the air chamber. An open member where openings 20 are formed is located in the air receiving passage 16. While Lobo may not teach at least one hole in the outer wall for allowing air to flow out of the air chamber, Akerman teaches outlet 23 for venting the bladder. It would have been obvious to one of ordinary skill in the art to modify Lobo to include holes in the outer wall as taught by Akerman for allowing air to flow out of the chamber to view the pressure within and provide a pressure release valve.

Claims 1-6, 10, 11, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. (U.S. Pub. No. 2005/0143796) in view of Siple.

Augustine teaches a cover 112 including a bladder 110 secured to the inner wall of the front panel of the cover. An air receiving passage 358, 330 along the lower portion of the bladder is provided along with openings between seal lines 120 between the inner and outer walls of the chamber allow air to flow into the chamber. An open member 358 is located in the air receiving passage. A plurality of holes 132 are provided in the outer wall. Augustine would appear to comprehend the heart of the invention with the exception of the overall shape of the covering. While Augustine teaches all of the parts including a front and back panel and shoulder portions it may not teach the releasable fasteners attached to the front and back panels. There appears to be no unobviousness to the overall design of the cover since Augustine also teaches of

other embodiments such as figure 6C. There appears to be no criticality to the specific shape of the cover as long as it is designed to fit on the upper torso of the patient. Siple teaches an obvious equivalent alternative design to the cover including front and back panel secured together by releasable fasteners 18. It would have been obvious to one of ordinary skill in the art to modify Augustine to shape the cover to include releasable fasteners between the front and back panels as taught by Siple as an obvious equivalent alternative shape to the cover for covering the upper torso of the patient.

Regarding claim 5, replacing lacing with hook and loop type fastening elements is well within the realm of the artisan of ordinary skill in the art and an obvious equivalent alternative means of secure two portions together. Hook and loop material have the obvious advantage of being a quicker means of adjustably securing the two portions together.

Claims 7, 8, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine '796 and Siple as applied to claim 1 above, and further in view of Villari et al.

Villari teaches the convention of providing spacer means 84 between narrow spaces within the bladder to maintain narrow passageway open. There is no unobviousness to the exact composition of the spacer means so long as it is porous to allow continuous flow of air from one end to the other end. It would have been obvious to one of ordinary skill in the art to further modify Augustine to include spacers between seals as taught by Villari in order to maintain narrow passageways open.

Claims 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine '796 and Siple as applied to claim 1 above, and further in view of Nathans et al.

Augustine teaches a plurality of seal lines 120 for directing flow evenly throughout the bladder. Nathans teaches a bladder that includes a more definite pathway for directing flow evenly throughout the bladder including a first set of seals 7 and a second set of seals 11 joined to the first seals. It would have been obvious to one of ordinary skill in the art to further modify Augustine to use a first set of seals and a second set of seals as taught by Nathans to better direct the flow of air throughout the bladder.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 25, 29-33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Augustine (U.S. Pat. No. 5,800,489).

This Augustine teaches a bladder comprising air impervious walls forming an air chamber and an air receiving passage formed in portion 220 of the bladder that contains the inlet 180. There are openings 227 allowing air to flow from the air receiving passage at 180 on the air chamber as a whole. The opening 227 is an open member or unsealed portion of the bladder located in the air receiving passage to allow air to flow in the passage through the openings into the chamber. There is at least one hole 217 in the outer wall.

There are a plurality of spaced seals 221 joining the walls.

Regarding claim 33, Augustine teaches the bladder has a plurality of horizontally spaced first seals and upright second seals joined to the first seals forming each of the passageways 220.

Claims 26, 27, 34, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine '489 in view of Villari et al.

Villari teaches the convention of providing spacer means 84 between narrow spaces within the bladder to maintain narrow passageway open. There is no unobviousness to the exact composition of the spacer means so long as it is porous to allow continuous flow of air from one end to the other end. It would have been obvious to one of ordinary skill in the art to modify Augustine to include spacers between seals as taught by Villari in order to maintain narrow passageways open.

Claims 9, 17-23, 28, 36-41 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

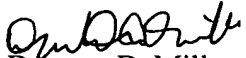
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4 August 2006


Danton DeMille
Primary Examiner
Art Unit 3764